

1 BOARD OF PERSONNEL APPEALS
2 PO BOX 201503
3 HELENA MT 59620-1503
4 Telephone: (406) 444-0032
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6 STATE OF MONTANA
7 BEFORE THE BOARD OF PERSONNEL APPEALS

8
9 IN THE MATTER OF UNFAIR LABOR PRACTICE 8-2017:

10 TEAMSTERS UNION LOCAL NO. 2,
11 Complainant,

12 vs.

13
14 BUTTE-SILVER BOW LOCAL
15 GOVERNMENT

16 Defendant,
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19)
20) RECOMMENDED ORDER
21) STAYING PROCEEDINGS
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19 I. INTRODUCTION

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21 On February 28, 2017, Erin Foley, Business Agent for Teamsters Union Local No. 2
22 (Union or Local 2), filed an unfair labor practice charge with the Board of Personnel
23 Appeals alleging that the Butte-Silver Bow Government (BSB) implemented a unilateral
24 change in working conditions thereby bargaining in bad faith, a violation of Sections 39-31-
25 201, 39-31-401(1) and (5), Montana Code Annotated (MCA). Leslie Clark, BSB Director of
26 Human Resources, filed a timely answer with the Board denying BSB had committed an
27 unfair labor practice.
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30 Pursuant to Section 39-31-405 (1), MCA, John Andrew was appointed by the Board of
31 Personnel Appeals to investigate the charge. During the course of the investigation
32 contact was made with representatives of both parties as was deemed necessary.
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34 II. FINDINGS AND DISCUSSION

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36 This case is straightforward. On August 29, 2017, BSB and the Union met in mediation
37 to resolve their open collective bargaining agreement. A tentative agreement was
38 reached on that date. The tentative agreement was subsequently ratified by the parties
39 to remain in full force and effect until May 31, 2017.
40

41 The agreement contains a grievance procedure culminating in final and binding
42 arbitration. Article 15, Section 1 of the grievance procedure provides:
43

44 Any grievance or misunderstanding which cannot be settled between the
45 Employer and the employee must be taken up with the Employer by the Business
46 Representative of the Union or any one designated by the Union.
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1 The parties agree that any differences involving the interpretation of this
2 Agreement, which cannot be settled among themselves, may be submitted to
3 arbitration upon the request of either party.
4

5 The issue in controversy between the Union and BSB centers around an agreed upon
6 change in contract language pertaining to "boot pay." As the Union points out, language
7 pertaining to this issue was changed during mediation to eliminate language reading
8 "replace every 2 years" with "to replace as needed." It is important to read the full
9 language of the section in question. It reads:

10
11 The employer shall provide the following safety equipment: (a) vests; (b) hard
12 hats; (c) rubber boots; (d) gloves when needed; (e) safety goggles when
13 necessary; (f) *the employer will purchase one pair of steel/hard toed boots up to*
14 *a maximum amount of \$200.00 as needed and at the supervisor's discretion."*
15 *(emphasis added)*
16

17 During the term of the agreement a bargaining unit member requested approval for new
18 boots. That request was not denied, but rather the supervisor requested verification of
19 the need for new boots as well as production of the boots needing replacement. BSB
20 contends this supervisory action was well within its management rights and comports
21 fully with the bargaining agreement. The Union disagrees and, as a result, Local 2 filed
22 a grievance against BSB. Eventually, Local 2 also filed the instant charge with the
23 Board contending that the actions taken by BSB constituted a unilateral change in a
24 mandatory subject of bargaining.
25

26 With the grievance in place, the parties discussed possible resolution. As a result of
27 these discussions a letter of agreement was drafted between BSB and Local 2 to
28 resolve the dispute. The letter of agreement was taken to the membership and
29 rejected, leaving the interpretation of the language of the contract in limbo and the
30 problem unresolved.
31

32 BSB has advised the mediator that this matter was properly filed as a grievance since at
33 its heart it involves contract interpretation. The investigator agrees with the position
34 taken by BSB. This issue is clearly within the four corners of the bargaining agreement.
35 Since the agreement is in effect, arbitration is available to interpret the contractual
36 language. In this vein, BSB has informed the investigator that since the grievance was
37 filed BSB would choose to follow the contractual language to resolve this matter. To
38 that end, BSB has also said it would waive any procedural issues and proceed to
39 arbitration.
40

41 The Union argues that the process BSB set up to verify the need for new boots is a
42 mandatory subject and thus it is appropriate for the Board to process this charge.
43 Regardless of the mandatory or permissive nature of the procedures put in place by
44 BSB the language in the bargaining agreement needs to be interpreted by an arbitrator,
45 not the Board as the term "supervisor's discretion" could encompass a variety of actions
46 very arguably addressed at the table and embodied in the collective bargaining
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1 agreement, issues all properly before an arbitrator, not the Board.
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3 Based on the foregoing, and the likelihood that arbitration, if it occurs, will address
4 issues at the heart of the pending unfair labor practice, it is the view of the investigator
5 that this matter should continue to be processed under the grievance procedure of the
6 collective bargaining agreement. Deferral and a stay are appropriate to resolve this
7 dispute as it currently stands. Further, even if not appealed at this time, upon proper
8 motion, either party can request the stay in proceedings be lifted at a time in the future
9 should that be deemed necessary.
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11 III. RECOMMENDED ORDER 12

13 It is hereby recommended that further action on unfair labor practice charge 8-2017 be
14 stayed and the matter further deferred to the grievance procedure.
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17 Dated this 13th day of April 2017.
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20 BOARD OF PERSONNEL APPEALS 21

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24 By: 
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26

27 John Andrew, Investigator
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29 APPEAL NOTICE/LIFTING OF STAY: 30

31 ARM 24.26.680(A). If during the course of the informal investigation of the unfair labor
32 practice charge, the board's agent determines that the charge is one that may be
33 resolved through deferral to the final and binding arbitration provisions contained in the
34 collective bargaining agreement between the parties, the board's agent may issue a
35 recommended order staying the board's proceedings.

36 (2) A party may appeal the recommended order to stay proceedings by filing an appeal
37 with the board within 14 days after service of the recommended order.

38 (3) An appeal of the recommended order to stay proceedings must clearly set forth the
39 specific factual or legal reasons indicating error. At the discretion of the board,
40 interested parties will be afforded an opportunity to respond to an appeal of the
41 recommended order.

42 (4) The board or the board's agent has the discretion to dissolve the stay and continue
43 with its investigation into the unfair labor practice if a party makes a proper showing
44 that:

45 (a) the unfair labor practice charge has not been resolved in a reasonable amount of
46 time;

47 (b) the arbitration decision has not resolved the unfair labor practice; or
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1 (c) the decision to stay the proceedings was inconsistent with the laws that govern
2 collective bargaining in Montana.

3 (5) A decision by the board or the board's agent to dissolve a stay is not appealable.

4 (6) If the board affirms and adopts the recommended order to stay proceedings, the
5 stay remains in place until there is a subsequent request to review the stay or the
6 board's order affirming and adopting the recommended order is removed by operation
7 of court order.
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9 The Recommended Order of the board agent is an administrative decision appealable
10 to the Board of Personnel Appeals. Unless there is a timely appeal to the Board of
11 Personnel Appeals, the Recommended Order of the board agent becomes final and is
12 not appealable to the district court. Any appeal of this Recommended Order Staying
13 Proceedings must be filed with the Board of Personnel Appeals, P.O. BOX 201503,
14 Helena, MT 59620-1503 within 14 days after service of the recommended order.
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17 CERTIFICATE OF SERVICE

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19 The undersigned does hereby certify that a true and correct copy of the
20 foregoing/attached "Recommended Order Staying Proceedings" was served upon the
21 following on the 13th day of April, 2017, postage paid and
22 addressed or delivered as indicated:
23

24 HR DIRECTOR LESLIE CLARK
25 BUTTE SILVER BOW
26 155 WEST GRANITE STREET STE 209
27 BUTTE MT 59701
28

29 BUSINESS AGENT ERIN FOLEY
30 TEAMSTERS LOCAL NO 2
31 PO BOX 3745
32 BUTTE MT 59701
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